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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE, P.E.
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-21
64 Common Street
Barre, MA

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Barre Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by Barre Players, Inc. (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 64 Common Street, Barre, MA.

B) Procedural History

By written notice dated March 1, 2005, the City of Barre Fire Department issued an Order of Notice to the Appellant informing it of the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the order is located at 64 Common Street, Barre, MA. The Appellant filed an appeal of said order on May 4, 2005. The Board held a hearing relative to this appeal on September 14, 2005, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Arthur Frost, Joseph Godfrey, and Mark A. Goldstein, Esq. Chief Joseph A. Rogowski represented the Barre Fire Department. Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Vice Chair, Chief Thomas Coulombe and Brian Gore. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Barre Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal
2. Basis for Appeal
3. Order of Notice of Barre Fire Department dated March 1, 2005
4. Second Order of Notice of Barre Fire Department dated April 18, 2005
5. Barre Players Organization Constitution
6. Occupancy Certificate for Hall
7. Occupancy Certificate for Meeting Room
- 8a Floor Plan for Main Floor
- 8b Floor Plans for Basement
9. Secretary of State Corporation information on Barre Players, Inc.
- 9(a-c) Interior and Exterior Photographs of the Facility

E) Subsidiary Findings of Fact

- 1) By notice dated March 1, 2005, the Barre Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 64 Common Street, Barre, MA in accordance with the provisions of M.G.L. c. 148, s.26G1/2.
- 2) The appellant is a small, non-profit theater group that operates in a former church building. The group produces approximately 30 play performances during a typical year. The building is also used by members for monthly meetings to plan play events and to provide for the care and use of the building. Rehearsals also take place regularly prior to performances. The appellant's representatives testified that no alcohol is served on the premises, the hours of operation do not extend late into the night. There is no smoking allowed within the facility and open flames and pyrotechnics are prohibited. The fire department does not contest the description of the building as presented by the Appellant.
- 3) The town building department has classified this building as an assembly use group. The main floor holds the auditorium/hall with seating in orderly rows with three well-defined aisles that lead directly to exits. The hall's occupancy rating lists its use as public assembly and/or institutional with a maximum occupancy of 300 persons. There is also a meeting room on the basement level, which has a maximum capacity of 100 persons.
- 4) Safety features of the building include wheelchair access to the side of the main floor of the building entering the middle of the seating area. Additionally there are three other exits, two in front of the building and one out the rear for a total of 4 exits on the main floor. All of the doors

are equipped with crash/panic bars and lit exit signing. Fire extinguishers are located throughout the main floor as are emergency lighting and smoke detectors. The facility has a central fire notification system directly linked to the Barre Fire Department, which is also located approximately ½ mile away from the facility. Further safety features include, audience notification of exit doors at the beginning of each performance.

- 5) Representatives for the appellant contend that this building is not used as a nightclub, bar, dancehall, or discothèque, or for similar entertainment purposes. The appellant testified that the main facility is most often used principally for plays as well as meetings held by the Appellant and other town and civic organizations.
- 6) The Chief testified that based upon his understanding of the laws, that the facility did fall within the bounds of requiring sprinklers, due in part to the “theatrical stage” and the “low level lighting”. The Appellant contends that the “theatrical stage” that the Fire Department is referring to, is, in fact the original platform that was built with the church and was used as the church altar.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “ every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6th Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is characterized, but not limited to, by the following factors:

- a) No theatrical stage accessories other than raised platform;
- b) Low lighting levels;
- c) Entertainment by a live band or recorded music generating above-normal sound levels;
- d) Later-than-average operating hours;
- e) Tables and seating arranged or positioned so as to create ill defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR , The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 4) The subject building has been classified as a place of assembly with a capacity of 100 persons or more. The current certificates of occupancy indicate that the town-building department has classified this building as an assembly use group occupancy with a total capacity (hall and meeting room) of 400 persons. Therefore, the subject building is considered a public assembly with a capacity of 100 persons or more.
- 5) However, this Board has determined that the provisions of M.G.L. c.148, s. 26G1/2 will apply to buildings that feature “A-2 like” characteristics that typically exist in nightclubs and dance halls. This building is neither classified as an A-2 use group nor does it have any of the characteristics of an “A-2 like” establishment. The Board concludes that this establishment, as currently designed and used, features typical characteristics of a theatre or auditorium. It is not currently used or designed as a night club, dance hall, discotheque, bar, or for similar entertainment purposes and within the scope of the enhanced sprinkler provisions of M.G.L. c.148, s. 26G1/2. The Board also notes that such exempt buildings are not precluded from ever featuring “A-2 like” events. The provisions of M.G.L. c.148, s.26G1/2 (4th paragraph), restaurants, lecture halls, educational function facilities or other similar places of assembly are allowed to be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector.

G. Decision and Order

The Board hereby reverses the Order of the Barre Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2 and c.304, s.11 of the Acts of 2004, since the building, as currently used, does not feature the “A-2 like”

characteristics that are typical of a nightclub, dance hall discotheque or bar or similar entertainment purpose. This decision is contingent upon the continued use of this particular building as described in the Board's findings.

H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Paul Donga	In favor
Thomas Coulombe	In favor
Brian Gore	In favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E.. Chairman

Dated: October 6, 2005

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1st CLASS MAIL, POSTAGE PRE-PAID, TO: Barre Players Club, Inc., c/o Mark A. Goldstein, Esq., 144 Central Street, Gardener, Massachusetts 01440, **and** Chief Joseph A. Rogowski, Barre Fire Department, P.O. Box 430, Barre, Massachusetts 01005.